

**Streamlined Sales Tax Governing Board**  
*Teleconference*  
*December 12, 2012*

President Russ Brubaker called the meeting of the Governing Board to order at 2:02 PM CST.

- **Welcome and Roll Call of Member States**

Mrs. Pam Cook called the roll of the states. Twenty-two (22) member states were present.

- **Approval of minutes from September 2012**

President Brubaker asked if anyone had corrections to the minutes and there were no comments. Tim Jennrich made a motion to approve the September 2012 meeting minutes. The motion was approved on a voice vote and the minutes were adopted.

- **Referral of Introduced Proposals to Committees/Councils for Study:**

None

- **Final Action on Amendments from September Meeting**

- Second vote on sales price voucher rule

Jerry Johnson stated that the Voucher Workgroup was established at the last Governing Board meeting for the Voucher rule. He said the Workgroup has had numerous teleconferences and there is one outstanding issue on how to deal with reward points. He reported that it is the consensus of the Workgroup that they need more time. He said they have a current working draft that will be posted, but they would continue to work on this. There is still some concern about the rule. Mr. Johnson said it is his opinion that the rule was drafted and considered at the last meeting and is now refined more and is consistent with what the Agreement states on sales price. Delegate John Doyle made a motion that the second vote on the Voucher Rule would be delayed until the next Governing Board meeting. The motion was approved on a voice vote.

- **Reports of Committees**

- *Executive Committee report*

President Brubaker reported that Craig Johnson of Wisconsin has been named the new Executive Director of the Streamlined Sales Tax Governing Board, effective January 7, 2013. Mr. Johnson said he is very excited about the position and is looking forward to the challenges that Streamlined faces in obtaining the federal collection authority. He said hopefully we can get that Legislation passed in the next session.

President Brubaker reported that in the December 7, 2012 Executive Committee meeting, he had asked Richard Dobson, after consulting with President Elect Wayne Harper, to Chair an SST Implementation Workgroup consisting of ten (10) to twelve (12) participants. President Brubaker said the chair would make additional appointments in the next week. President Brubaker plans to outreach to the Business Advisory Council (BAC) and state delegates as well.

President Brubaker reported that the Executive Committee has taken action on whether Tennessee is in-compliance. He said the fact is that they are in-compliance because of the amendment adopted in 2007 which grandfathered Associate Member States as of that date.

- **State and Local Advisory Council**

Christie Comanita reported that they are still considering a SLAC only meeting, tentatively in the third week of March, 2013. She said that they are working on a cost effective location. Once they obtain the list of priorities that the Executive Committee would like to see in 2013 they will complete an agenda of further issues to be discuss. Ms. Comanita said they plan to hold a SLAC teleconference in either late January or early February regarding essential clothing. President Brubaker asked Ms. Comanita to forward a list of topics that she feels are important to the Executive Committee.

- **Discussion of the Federal legislation on remote sales**

President Brubaker said there is talk that Federal legislation will not be passed in the lame duck session and asked Wayne Harper to provide a report. Representative Harper said that a number of governors, senators and congressmen have been updated on the key issues. He said the tone is not if the Bill will pass but when and this will be a key element of the Tax Reform Act. He reported that Scott Peterson had met with the Senate Finance staff yesterday. Mr. Peterson said that those in attendance were Steve Kranz, Emmitt O'Keefe (Amazon), Joe Crosby (RILA), Holly Porter (Baucus-MT), Nick Wyatt, and Alvin Chan (Hatch-UT). The hosts were Corey Tellez (Durbin-IL), Allison Martin (Alexander-TN), and Eric Orman (Enzi-WY). The group was invited to provide an historical presentation to the Senate Finance staff. They went through all of the different issues and how Streamlined had responded to them. Mr. Peterson said they took questions from the Senate Finance staff on the things they did not understand and there is some hesitation about possible failure. President Brubaker said there are meetings continuing this week at fairly high levels among staff. Richard Dobson asked Mr. Peterson to elaborate regarding the concern about enactment and if there were general implementation issues. Mr. Peterson said he thought the concern was just the implementation of the Bill. He said there are discussions about more uniformity. They asked how you would get the non-members states to support them. President Brubaker asked if Richard Dobson could quickly address these concerns with the plan for implementation.

President Brubaker reported that the Executive Committee had voted on December 7 to extend the contracts of the federal lobbyist for January and February, 2013.

- **Compliance Review and Interpretations Committee (CRIC)**

- 2012 State Recertification Report

President Brubaker asked Chairman Myles Vosberg to explain the state compliance recertification process. Mr. Vosberg reported that each state would provide a Certificate of Compliance and Taxability Matrix as of August 1, 2012. Afterwards, an original report is posted. Each state has 30-days to respond to any of the comments in that report. There is an additional 10-day period if anyone would like to respond or add to the comments during the 30-day period. There is a schedule of meetings where the Committee discusses three to four states each time. The states have an opportunity to talk about the issues and the public has a chance to comment. The CRIC votes on whether they feel the states are in or out-of-compliance.

Chairman Vosberg said there were 3-issues carried forward from last year that CRIC did not consider:

1. Related to how Section 310 sourcing applies to the sourcing of digital goods that are transferred electronically. He stated that SLAC is currently working on that issue;
2. There is a question on 314-C3 related to prepaid wireless service. The state has an option to use the number of the mobile phone for sourcing; and,
3. Prewritten computer software: there is an assigned workgroup that has been working on this.

Chairman Vosberg said that after the reviews there were fifteen (15) states with unanimous decision that they were in-compliance based on decisions that the Compliance Committee made. Those states are Arkansas, Iowa, Kansas, Kentucky, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia and Wisconsin. Chairman Vosberg made a motion that these states are in-compliance. Ferdinand Hogroian of the BAC said he did not believe there is an issue with these states being found in-compliance. Pam Cook called the roll of the states and the motion passed with all 22-full member states voting.

#### Georgia

Chairman Vosberg said with Georgia some issues were adopted in the Georgia code that did not comply with the definitions in the Streamlined Agreement. There is a threshold on computers that apply to a single purchase rather than a single article purchase within the Streamlined rule. The third issue was energy used in manufacturing which is exempt from local and state sales tax in most cases. There is one educational local option tax that still taxes energy for manufacturing purposes. There is conformity between state and local tax issues. Anita DeGumbia of Georgia said they are fully aware of these issues and are trying to work through them to the best of their ability. She said they are getting ready to go into legislative session next month and will bring this to legislative attention. Chairman Vosberg moved that Georgia be found out-of-compliance on the 3-issues. There was no discussion. Pam Cook called the roll of the states and the motion passed with 21-states voting yes and one abstention.

#### Indiana

Chairman Vosberg said that Indiana had two carryovers from last year. He said at the time of the review Indiana was unable to accept the SER electronic return from the model-4 sellers. The other issue from last year was that Indiana exempts blood glucose monitoring equipment without a prescription and all other durable medical equipment requires a prescription. The third issue is that Indiana has not adopted the new direct mail sourcing definitions and sourcing. The Agreement provides separate definitions and sourcing for promotional direct mail and other direct mail. There are different sourcing rules for those. The last item is that their statutes do not allow rounding on an item basis where the Agreement allows either on an individual item basis or on an invoice basis. Indiana allows for a total invoice. Larry Molnar of Indiana said they acknowledge that they are not ready to accept the SERs for model-4 sellers. He said they are working on that and anticipate getting that done early in 2013. He acknowledge they were found out of compliance in 2011 on an issue relating to blood glucose monitoring equipment and have already notified their legislature. They intend to work on that during the upcoming session and the same with the direct mail sourcing. He said they acknowledge that it does not match the

Streamlined Agreement as it reads and legislature will work on that as well. On the third issue, he said they had hoped they could get that issue deferred. He said they had brought forth a fairly simple fact pattern regarding sales tax on a per item basis, such as screws under a contractor contract that could escape sales tax at 4 cents. Chairman Vosberg moved that Indiana be found out-of-compliance on the 4-issues. Bruce Johnson asked for clarification regarding Indiana's points. Mr. Molnar said the way their statute reads, sales tax is based on the gross transaction price. They are concerned about at least one fact pattern to put on an invoice per item charge where a screw costs 4-cents each and where that would not be subject to sales tax. He provided an example where if there were a million nails billed at 4-cents each, if per item is in the invoice then sales tax could be avoided. Bruce Johnson asked for Chairman Vosberg's response. Chairman Vosberg said in his opinion, in order for each item to be taxed separately they would need to be listed on an invoice separately and he didn't feel that would happen with a million nails. Mr. Molnar agreed that this would be a rare occurrence. Chairman Vosberg said maybe this is an option that should be considered for drafting a rule to tighten some of that up. President Brubaker asked SLAC to potentially take a look at that. Ferdinand Hogroian said BAC had a comment with respect to the rounding rule with a need for interpretation that should be examined. The motion passed with 21-state votes and one abstention.

#### Michigan

Chairman Vosberg said Michigan has two issues, one carried over from last year on one-way paging. He said the new issue this year was the direct mail rule in definitions which has to do with adopting provisions for direct mail. Mike Eschelbach said those will be reviewed by the legislature the first of the year. Chairman Vosberg made a motion that Michigan be found out-of-compliance on the two issues identified. Pam Cook called the roll of the states and the motion passed with 21-states votes and one abstention.

#### Minnesota

Chairman Vosberg said Minnesota has one issue that the Governing Board found them out-of-compliance on last year. When it relates to the provision of prepared food, CRIC recommended that they be found out-of-compliance. Cathy Wick of Minnesota said they feel they are not substantially out-of-compliance as they have had this provision in their law since 2002. She said they had expected that the meat and seafood exemption would expire on December 31, 2005 but their Legislature thought it would be viewed as a tax increase; therefore they had left it intact. For the years between 2006 and 2010, the CRIC and Governing Board had found Minnesota to be in-compliance even though they had this exemption in place. She said they have had no problems with taxpayers coming forward and stating that this is a burden on them. Therefore she said Minnesota maintains that they are substantially in-compliance. Chairman Vosberg moved that Minnesota be found out-of-compliance on the one issue. Tom Gillespie asked if this is identified on the taxability matrix. Ms. Wick said it has always been identified on their taxability matrix regarding this provision and had never been cited as an issue until last year and this year. Ferdinand Hogroian said if the issue was discussed last year and Minnesota was found out-of-compliance, the same standards should apply this year. Chairman Vosberg said from his point of view, Minnesota has disclosed this issue on their matrix every year and it was visible for everyone to see. He said that last year, his vote was that Minnesota was not out-of-compliance. Mark Nebergall said they were found out-of-compliance on the issue last year and nothing has changed. He said he didn't understand how the Governing Board could not find them out-of-

compliance this year. There were no comments. Mike Eschelbach said in looking at section 805 of the Agreement, it notes that states are substantially compliant with each of the provisions set forth in the Agreement. If Minnesota exempts only the two small areas of ready to eat meat and seafood, but in other respects applied the food definition it was not clear to him that they are not substantially in-compliance with that provision. There was no further discussion. Pam Cook called roll, 12-states voted yes, 9-no and one abstention. The motion failed. Minnesota was not found to be out-of-compliance. President Brubaker said at some point the Governing Board needs to take up what substantial compliance means in the Agreement. He said that seemed to be where the variation is in the Agreement.

#### Nevada

Chairman Vosberg said Nevada has one issue with a carryover from last year related to direct mail, but different from the direct mail issue that has been discussed so far at today's meeting. Under the direct mail rules the purchaser can provide a direct mail certificate or direct pay certificate and can be responsible for reporting tax on all of the direct mail. He said in Nevada's case they do not acknowledge direct pay, and tax on all direct mail that is delivered within Nevada must be collected by the seller. Chris Nielsen of Nevada said they feel that they are in substantial compliance with all the rules as a whole. He said they are in agreement with the CRIC report and this will go to the legislature in February. Chairman Vosberg made a motion that Nevada be found out-of-compliance on the one issue. There were no discussions or comments. Pam Cook called the roll of the state. The motion passed with 21-state votes and one abstention.

#### New Jersey

Chairman Vosberg said New Jersey has one issue and are at this time unable to accept the simplified electronic return from other than the model-1 sellers. Harry Fox of New Jersey said they accept non-compliance. Chairman Vosberg made a motion that New Jersey be found out-of-compliance on the one issue. There was no discussion or public comment. Pam Cook called the roll of the states. The motion passed with 20-states voting yes, 1-no and one abstention.

#### North Carolina

Chairman Vosberg said North Carolina has one issue. They have not adopted direct mail sourcing. Eric Wayne said they acknowledge that they have not adopted direct mail sourcing. He requested that since the states are asked to submit written responses in the future could the BAC be allowed to post their responses on the Streamlined Sales Tax website. Mark Nebergall asked if BAC has to file a written comment for something that has been identified by the staff in a report. Chairman Vosberg said this was not identified in the final version of the report that was posted on the website. President Brubaker recommended that Chairman Vosberg consider Mr. Wayne's suggestion of process improvement. Chairman Vosberg moved that North Carolina be found out-of-compliance on the direct mail issue. There was no further discussion or public comment. Pam Cook called roll and the motion passed with 21-state votes and one abstention.

#### Wyoming

Chairman Vosberg said Wyoming has one issue which is direct mail. Dan Noble of Wyoming agreed that they are out-of-compliance on this issue and had considered adopting an emergency

rule. He said the current rule is in the statute and they had decided to go with the legislative fix. Chairman Vosberg moved that Wyoming be found out-of-compliance on the direct mail issue. Pam Cook called roll and the motion passed with 21-states voting and one abstention.

Chairman Vosberg thanked everyone that was involved in this process, the CRIC members, Ms. Pam Cook, Director of Research, who did an outstanding job and also the BAC representatives. He said they had a lot of agreement on the issues and it certainly went really well.

President Brubaker said that completes the state compliance review for 2012.

- **Proposed Amendments to SSUTA for Discussion and Possible Action**

None

- **Proposed Rules for Discussion and Possible Action**

None

- **Proposed Bylaw Changes for Discussion and Possible Action**

None

- **Old Business**

None

- **New Business**

None

President Brubaker said he would like to take a moment of personal privilege to thank the Governing Board for allowing him to act as President this year. He reported that he will be retiring from service for the state of Washington as of March 1, 2013.

- **Adjournment**

Wayne Harper made a motion to adjourn at 3:07 PM CST.